

Telemundo of Puerto Rico, Inc. and Union de Periodistas, Artes Graficas Ramas Anexas, affiliated to the Newspaper Guild, AFL-CIO, CLC. Case 24-CA-7414

August 16, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Pursuant to a charge and amended charge filed on April 18 and May 28, 1996, respectively, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on May 30, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 24-RC-7694. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On July 9, 1996, the General Counsel filed a Motion for Summary Judgment. On July 11, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits that the Union has requested and that it has refused to recognize and bargain with the Union, but attacks the validity of the certification on the basis of the Board's determination in the representation proceeding that the Respondent's technical directors are not supervisors.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.¹ We therefore find that the Respondent has

¹ In its response to the Notice to Show Cause, the Respondent contends that there is significant new information that was not considered in the representation case that could materially affect the outcome of this case, and requests that this information, consisting of a May 15, 1995 letter from the Respondent's vice president of human resources and a May 9, 1996 affidavit (with cover letter) by the Respondent's production services department director, be admitted into evidence. We reject the Respondent's contention and deny

not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Commonwealth of a Puerto Rico corporation with an office and place of business in Hato Rey, Puerto Rico, has been engaged in the operation of a television broadcasting station. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$100,000 and purchased and received at its Hato Rey, Puerto Rico facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Puerto Rico. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held February 28, 1996, the Union was certified on March 11, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

its request. The May 15, 1995 letter, which indicates that the position of technical supervisor was being eliminated, was previously submitted to the Board with the Respondent's request for review of the Regional Director's January 30, 1996 Decision and Direction of Election in the representation proceeding, and was fully considered by the Board in that proceeding. Thus, the May 15, 1995 letter is clearly not "new information" as asserted by the Respondent, nor is it newly discovered and previously unavailable evidence. As for the May 9, 1996 affidavit by the Respondent's production services department director (Elizabeth Rivera), we find that it also does not contain any newly discovered and previously unavailable information. We note in this regard that Rivera testified in the representation proceeding, and there is nothing in the Respondent's opposition or the affidavit itself explaining why she could not have presented the information contained in her affidavit, most of which merely restates the information in the May 15, 1995 letter and describes in general terms her own duties and the former duties of the technical supervisor, at that time. The only information in the affidavit which on its face could be characterized as "new" in the sense that it involves events allegedly occurring after the February 28, 1996 election, is the alleged fact that the Respondent created an evaluation committee in March 1996, which included the technical directors, for the purpose of evaluating the work of the technical crew. Even if true that such a committee were created, however, and that this constituted a change in the technical directors' duties, such information would not constitute newly discovered and previously unavailable evidence. See *Indeck Energy Services*, 318 NLRB 321 fn. 5 (1995); and *East Michigan Care Corp.*, 246 NLRB 458, 459 (1979).

Included: All technical directors (TD) employed by the Employer at its TV station located at Hato Rey, Puerto Rico.

Excluded: All other employees, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since about March 20, 1996, the Union has requested the Respondent to bargain, and, since about March 21, 1996, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after March 21, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Telemundo of Puerto Rico, Inc., Hato Rey, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Union de Periodistas, Artes Graficas Ramas Anexas, Affiliated to the Newspaper Guild, AFL-CIO, CLC as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All technical directors (TD) employed by the Employer at its TV station located at Hato Rey, Puerto Rico.

Excluded: All other employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Hato Rey, Puerto Rico, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 24 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 18, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Union de Periodistas, Artes Graficas Ramas Anexas, affiliated to the Newspaper Guild, AFL-CIO, CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

Included: All technical directors (TD) employed by us at our TV station located at Hato Rey, Puerto Rico.

Excluded: All other employees, office clerical employees, guards and supervisors as defined in the Act.

TELEMUNDO OF PUERTO RICO, INC.